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No. 85-2071

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

THE STATE OF OKLAHOMA
Petitioner,

v.

JAMES LESTER POST, JR.
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

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ATTORNEY FOR RESPONDENT

July 1986

Summary of Argument:

The decision of the Oklahoma Court of Criminal Appeals should be upheld as it is in keeping with prior decisions of this Court, and to reverse the lower court's ruling would require this Court to hold that no right to privacy exists under the United States Constitution.

Reasons For Denying The Petition

The Oklahoma Court of Criminal Appeals reversed Appellant's conviction for Sodomy on the grounds that private, non-commercial, consensual, heterosexual, oral and anal sex between consenting adults is protected from State regulation absent a compelling State interest. Petitioner does not claim the State of Oklahoma has any interest whatsoever in regulating such conduct. Instead Petitioner asks this Court to abolish the constitutionally protected right to privacy.

Petitioner asks this Court to abolish "the most comprehensive of rights

and the right most valued by civilized man" **Olmstead v. United States**, 227 U.S. 438, 478 (1928) (Brandeis, J. dissenting) in order to subject any sexual practice to even the most "unjustified governmental interference." (Petitioner's Brief at page 10). However, this Court has stoutly defended the right of individuals to be free from "unjustified" intrusions into their personal lives. Therefore the precedents set down by this Court in cases such as **Roe v. Wade**, 410 U.S. 113, 117 (1973); and **Stanley v. Georgia**, 394 U.S. 557 (1969) should be followed and the Petition denied.

CONCLUSION

This Court should uphold the constitutionally protected right to privacy. Towards that end it should deny the petition.

Respectfully submitted,

JAMES LESTER POST, JR.

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